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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,875	01/08/2002	Fung-jou Chen	13,042.3	5370

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/042,875

**Applicant(s)**CHEN ET AL. **Examiner**

Jacqueline F Stephens

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9,16,40,42-71,74,78-88 and 91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 85-88 and 91 is/are allowed.
- 6) ☒ Claim(s) 9,16,40,42-71 and 78-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/1/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 9, 40, 43-71, and 78-87 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 5990377. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application does not claim the depressed regions remain substantially hydrophilic, the present application obviously includes a base sheet capable of having hydrophobic elevated regions and hydrophilic depressed regions because the hydrophobic matter is deposited on the elevated regions and not present in the depressed regions. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 9, 40, 42-48, 50-53, 55-71, 74, 78-88, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr USPN 5763044.

As to claims 9, 42, 44, 45, 48, 49, 54, 57, 59, 67, 69, 74, 76, and 79-81, Ahr discloses an absorbent web capable of being used as a pad and having a dry feel when wet (Abstract) comprising a cellulosic basesheet (col. 6, lines 40-45) having an upper surface and a lower surface, the upper surface having elevated and depressed regions (Figure 7). The web further comprises hydrophobic matter (col. 5, lines 63-65) preferentially on the elevated regions of the upper surface of the base sheet (Figure 7).

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Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses the height of the apertures is .254-1.01 mm (col. 9, lines 6-10 Benz discloses area and diameter of apertures, from which the examiner calculated the height). The height of the apertures corresponds is at least .254 mm, therefore the depth of the sheet has to be at least .2 mm.

Ahr does not disclosed the claimed performance test characteristics. However, pages 36 and 40-42 of the present application sets forth materials capable of being used in the dual-zoned web. Ahr teaches similar materials for the web as well as provides the method of making a wetlaid web, (col. 4, lines 27-55; col. 5, lines 63-65; col. 6, lines 40-55 and Figure 7). Thus, Ahr obviously includes a topsheet capable of having the claimed performance characteristics. When the structure recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

As to claim 40, Ahr discloses the basesheet is wetlaid (col. 4, lines 34-36).

As to claim 43, see Ahr, Figure 7.

As to claim 46, see Figure 7.

As to claims 47 and 52', see Figure 7, the hydrophobic matter comprises fibrils **54**, which extend into the apertures of basesheet **52**.

As to claims 50 and 68, Ahr discloses 9-400 apertures per square inch (the number of apertures corresponds to the number of protrusions per square inch), which is included in the range of 5-300 protrusions per square inch (col. 5, lines 4-6). Ahr incorporates by reference (col. 4, lines 49-55) Benz USPN 3881987 who discloses the height of the apertures is .254-1.01 mm (col. 9, lines 6-10 Benz discloses area and diameter of apertures, from which the examiner calculated the height).

As to claims 51, 55, and 66, Ahr does not disclose the exact Rewet values. It is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the Rewet value is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the

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claimed Rewet value, since discovering an optimum value of a result effective variable involves only routine skill in the art. Claim 55 additionally claims the base sheet comprises 20% or greater of high yield pulp fibers, which Ahr discloses (col. 4, lines 40-44).

As to claims 53 and 84, Ahr discloses superabsorbent on the base sheet (col. 10, lines 13-25.

As to claims 56, 78, 82, and 83, see Ahr, Figure 7.

As to claim 58, Ahr discloses the base sheet is airlaid (col. 4, lines 27-29).

As to claim 60, Ahr does not specifically disclose a fibrous nonwoven web. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate the loose fibrils taught in Ahr in a nonwoven web, since forming in one piece an article, which has formerly been formed in several pieces and put together involves only routine skill in the art.

As to claim 61, Ahr discloses the hydrophobic matter comprises synthetic fibrils  
54.

As to claim 62, Ahr does not specifically disclose the hydrophobic matter comprises polyolefin. Ahr discloses the fibrils are formed from a material, which is generally hydrophobic in nature. It is old and well known in the art, and therefore obvious to use a polyolefin material, which is widely used in absorbent articles, particularly in the topsheet for its hydrophobic characteristics.

As to claim 63, see Ahr col. 7 through col. 10.



As to claim 64, see Figures 4, 5, and 7.

As to claims 70 and 71, Ahr discloses the basis weight of the base sheet is .058-14.6 g/m<sup>2</sup> (col. 10, lines 31-32), which is included in the range of from about 10-70 gsm. Ahr is silent on the basis weight of the hydrophobic matter. It is evident that Ahr has a value for this characteristic. Ahr recognizes that the choice of fibril length and fibril density, which is affected by the fibril basis weight, can be varied and this will affect the rewet characteristics (col. 5, lines 59-60). Ahr, therefore recognizes the function of the topsheet in terms of rewet, acquisition, and tactile feel is a result effective variable of fibril length and density. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Ahr with the claimed basis weight of the hydrophobic matter, since discovering an optimum value of a result effective variable involves only routine skill in the art.

***Allowable Subject Matter***

7. Claims 85-88 and 91 are allowed.

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**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thomas USPN 6242074 is cited to show hydrophobic fibers on the surface of an apertured topsheet useful in absorbent articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703)308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

September 28, 2004